

EDMUND G. BROWN JR., Attorney General
of the State of California
THOMAS S. LAZAR
Supervising Deputy Attorney General
DAVID P. CHAN, State Bar No. 159343
Deputy Attorney General
California Department of Justice
110 West "A" Street, Suite 1100
San Diego, CA 92101

P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2600
Facsimile: (619) 645-2061

Attorneys for Complainant

**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. R-2063

ELAINA M. GRAVITT, R.C.P.
31021 Avenida Ximino
Cathedral City, CA 92234

A C C U S A T I O N

Respiratory Care Practitioner License No. 18448

Respondent.

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about December 28, 1995, the Respiratory Care Board issued Respiratory Care Practitioner License Number 18448 to ELAINA M. GRAVITT, R.C.P. (Respondent). The Respiratory Care Practitioner License expired on February 28, 2007, and has not been renewed.

///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

4. Section 118(b) of the Code states:

5. Section 3710 of the Code states, states in pertinent part:

“The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act].”

7. Sections 3750 of the Code states:

... ..

“ ”
...

1 8. Section 3750.5 of the Code states, in pertinent part:

2 "In addition to any other grounds specified in this chapter, the board may deny,
3 suspend, or revoke the license of any applicant or license holder who has done any of the
4 following:

5 "(a) Obtained or possessed in violation of law, or except as directed by a licensed
6 physician and surgeon, dentist, or podiatrist administered to himself or herself, or
7 furnished or administered to another, any controlled substances as defined in Division 10
8 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug
9 as defined in Article 2 (commencing with section 4015) of Chapter 9.

10 "(b) Used any controlled substance as defined in Division 10 (commencing with
11 Section 11000) of the Health and Safety Code, or any dangerous drug as defined in
12 Article 2 (commencing with section 4015) of Chapter 9.

13 "..."

14 9. California Code of Regulations (CCR), title 16, section 1399.370, states,
15 in pertinent part:

16 "For the purposes of denial, suspension, or revocation of a license, a crime or act
17 shall be considered to be substantially related to the qualifications, functions or duties of a
18 respiratory care practitioner, if it evidences present or potential unfitness of a licensee to perform
19 the functions authorized by his or her license or in a manner inconsistent with the public health,
20 safety, or welfare. Such crimes or acts shall include but not be limited to those involving the
21 following:

22 "(a) Violating or attempting to violate, directly or indirectly, or assisting
23 or abetting the violation of or conspiring to violate any provision or term of the
24 Act.

25 "..."

26 10. Section 492 of the Code states:

27 "Notwithstanding any other provision of law, successful completion of any diversion
28 program under the Penal Code, or successful completion of an alcohol and drug problem

1 assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of
2 Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2
3 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in
4 that division, from taking disciplinary action against a licensee or from denying a license for
5 professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a
6 record pertaining to an arrest.

7 "This section shall not be construed to apply to any drug diversion program operated by
8 any agency established under Division 2 (commencing with Section 500) of this code, or any
9 initiative act referred to in that division."

10 COST RECOVERY

11 11. Section 3753.5, subdivision (a) of the Code states, in pertinent part:

12 "In any order issued in resolution of a disciplinary proceeding before the board,
13 the board or the administrative law judge may direct any practitioner or applicant found to have
14 committed a violation or violations of law to pay to the board a sum not to exceed the costs of the
15 investigation and prosecution of the case."

16 12. Section 3753.7 of the Code states:

17 "For purposes of the Respiratory Care Practice Act, costs of prosecution shall
18 include attorney general or other prosecuting attorney fees, expert witness fees, and other
19 administrative, filing, and service fees."

20 13. Section 3753.1 of the Code states:

21 "(a) An administrative disciplinary decision imposing terms of probation may
22 include, among other things, a requirement that the licensee-probationer pay the monetary
23 costs associated with monitoring the probation."

24 FIRST CAUSE FOR DISCIPLINE

25 (Use of Controlled Substance)

26 14. Respondent is subject to disciplinary action under sections 3750, 3750.5,
27 subdivision (b), and CCR, title 16, section 1399.370, subdivision (a), in that Respondent
28 admitted to using a controlled substance, to wit: methamphetamine. The circumstances are as

1 follows:

2 (a) At approximately 7:00 a.m., on or about January 17, 2007, Respondent
3 reported to work at Tenet, Desert Regional Medical Center. Respondent stated that she was
4 coming in to work in place of her husband because, according to her, he had not slept that night.
5 After being informed that Respondent may be under the influence of “drugs,” the supervisor for
6 Pulmonary Services observed Respondent curled up in a chair with her eyes closed. When
7 questioned, Respondent seemed disoriented, was not focusing on the questions being asked, and
8 was jittery. Respondent was referred to Employee Health for a fitness-for-duty assessment and
9 drug screening.

10 (b) At Employee Health, Respondent was crying and had difficulty recalling,
11 adding and subtracting, and was unable to balance herself on one foot. Her pupils were dilated
12 and barely reactive. Respondent admitted to using methamphetamine and stated that she had
13 participated in a drug rehabilitation program approximately a year ago. Respondent admitted to
14 “doctor” shopping for narcotics, Celexa¹ and Ativan².

15 (c) A drug screen was conducted on Respondent and the results came back
16 positive for amphetamine³. Another analysis confirmed that the amphetamine found in the initial
17 drug screen was from a street drug and not a prescribed medication. Respondent was placed on
18 medical leave of absence.

19 SECOND CAUSE FOR DISCIPLINE

20 (Possession of a Controlled Substance)

21 15. Respondent is further subject to disciplinary action under sections 3750,
22 3750.5, subdivision (a), and CCR, title 16 section 1399.370, subdivision (a), in that she was in

23
24 1. Celexa is an antidepressant.

25
26 2. Ativan is used to treat anxiety disorders and may be habit-forming.

27
28 3. A central nervous system stimulant. Methamphetamine is the crystalline form of
amphetamine.

1 possession of a controlled substance, to wit: methamphetamine, as more particularly described in
2 paragraph 14, above, which is incorporated by reference as if fully set forth herein.

3 PRAYER

4 WHEREFORE, Complainant requests that a hearing be held on the matters herein
5 alleged, and that following the hearing, the Respiratory Care Board issue a decision:

6 1. Revoking Respiratory Care Practitioner License Number 18448 heretofore
7 issued by the Board to ELAINA M. GRAVITT, R.C.P.;

8 2. Ordering ELAINA M. GRAVITT, R.C.P. to pay the Respiratory Care
9 Board the costs of the investigation and enforcement of this case, and if placed on probation, the
10 costs of probation monitoring;

11 3. Taking such other and further action as deemed necessary and proper.

12
13
14 DATED: March 23, 2007

15
16
17 Original signed by Liane Zimmerman for:
18 STEPHANIE NUNEZ
19 Executive Officer
20 Respiratory Care Board of California
21 Department of Consumer Affairs
22 State of California
23 Complainant
24
25
26
27
28